

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.2180 of 2018 & CMP.No.16901/2018

M/s.Suguna Rajagopal Agencies,
rep.by its Proprietor
Mr.R.Sudharshan
HPCL Retail Outlet Dealer,
No.1205, Trichy Road,
Coimbatore.
/
Respondent

...Appellant

4th

Vs

1.C.Vigneswaran
Respondent /
Writ Petitioner

... 1st

2.The Secretary to Government of India,
Ministry of Petroleum and Natural Gas
Shastri Bhavan
New Delhi-110 001.

3.The Chairman cum Managing Director,
Hindustan Petroleum Corporation Limited,
17, Jamshedji Tata Road,
Mumbai-400 020.

4.The Regional Manager,
Coimbatore Regional Office,
HPCL House, 18/3, Big Bazaar Road,

Coimbatore 641 001.

...Respondents

PRAYER:- Writ Appeal filed under clause 15 of the Letter Patents prays to set aside the order of this Court in W.P.No.17027 of 2018, filed for the relief of Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 18.01.2018 and to cancel the allotment of the fourth respondent.

For Appellant : Mrs.Hema Sampath, Senior Counsel
assisted by Mrs.R.Meenal

For Respondents : Mr.S.Arokia Maniraj for R1
Mr.G.Karthikeyan
Assistant Solicitor General of India for R2

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J..]

The 4th respondent in W.P.No.17027 of 2018 is the appellant herein.

2.The 1st respondent / writ petitioner filed the said writ petition against the respondents 1 to 3 as well as against the appellant herein who is arrayed as 4th respondent in the writ petition, praying for issuance of writ of Mandamus directing the official respondents to consider his representation dated 18.01.2018 and to cancel the allotment of the 4th respondent with the petroleum dealership within a stipulated time as may be fixed by this Court.

3.The 1st respondent / writ petitioner in support of this writ petition would further among other things that he belongs to Scheduled Caste community and also applied for Retail Outlet Dealership to the Hindustan Petroleum Corporation Limited under the SC/ST Quota but he could not succeed. According to the 1st respondent / writ petitioner, the allotments of retail outlet is being given to encourage the weaker section by way of policy decision and therefore, it is obligatory on the part of the official respondent to see to it that such a policy decision is not violated or vitiated.

4.It is also the case of the 1st respondent / writ petitioner that the appellant / 4th respondent in the writ petition is an Advocate by profession and has obtained the petroleum retail outlet dealership under SC/ST category by playing fraud by suppressing his qualification and profession and that apart, he is also having another such allotment in the name of his maternal uncle viz., Mr.Ranganathan, in the same District at No.368, Mettupallayam Road, Coimbatore-641 018 and thereby, he has got two allotments under SC/ST category. The 1st respondent / writ petitioner has also invited attention of this Court to Clause 28-B of the Dealership Agreement of Hindustan Petroleum Corporation Limited and would submit that as per the said clause, *the Dealer himself (if he is an individual) or the partners themselves (if the Dealer is a partnership firm) shall not, take up*

any other employment or engage in any other business and / or profession apart from the operation of the Dealership which is the subject matter of this Agreement.

5.The 4th respondent was the practising Advocate at the time of submission of his application for dealership and that in the light of the said clause, he should not to have been awarded dealership by the official respondents.

6.It was also pointed out by the 1st respondent / writ petitioner that he did participate in the Civil Judges examination conducted by the Tamil Nadu Public Service Commission as practicing Advocate and on that ground also he was ineligible to get a dealership and a detailed representation submitted in that regard dated 18.01.2018 submitted to the official respondents have failed to invoke any kind of response and therefore, he was constrained to approach this Court by filing this writ petition.

WEB COPY

7.The writ petition was listed for hearing for admission on 09.07.2018 and the learned Judge after taking note of the contents of the affidavit, had dispose of the writ petition by directing the 3rd respondent

namely the Regional Manager, Coimbatore Regional Office, HPCL House, Coimbatore to hold a proper enquiry after issuing notice to both the petitioner as well as the appellant / 4th respondent, with a further direction that if it is found that the appellant / 4th respondent has misrepresented his practice as an Advocate without withdrawing his enrollment, the third respondent shall take suitable action and pass appropriate orders within a period of six weeks from the date of receipt of a copy of that order. The 4th respondent aggrieved by the manner of disposal in the impugned dated 09.07.2018 has filed this writ appeal.

8.Mrs.Hema Sampath, learned Senior Counsel assisted by Ms.R.Meenal, learned counsel appearing for the appellant / 4th respondent in the writ petition made the following submissions.

9.Though the appellant has been arrayed as 4th respondent in the writ petition, it is an admitted fact that without ordering notices to him, so as to enable him to refute the allegations levelled against him by the 1st respondent / writ petitioner in the affidavit, the writ petition came to be disposed of at the admission stage itself on 09.07.2018. The official respondents more particularly, the 3rd respondent was also not afforded with any opportunity to file the counter affidavit with supporting documents

for the purpose of refuting allegations levelled by the 1st respondent / writ petitioner especially with regard to the alleged irregularities in allotment of retail outlet dealership in respect of person belonged to SC/ST category.

10.The 1st respondent / writ petitioner is also related to the appellant / 4th respondent and he is estranged son-in-law of his sister and therefore, some cases are pending between the 1st respondent/writ petitioner and his wife-niece of the appellant herein and the said fact has been totally suppressed in the writ petition. The appellant/4th respondent, even in the application submitted for getting retail outlet dealership, has disclosed the fact that he is an advocate and while evaluating, he has also been awarded marks by the concerned authorities.

11.Though, it is a stand of the 1st respondent / writ petitioner that he did apply for the retail outlet dealership, no material has been placed to that effect and in the absence of his application for the very same dealership, the 1st respondent / writ petitioner cannot maintain the writ petition. It is also contended by the learned Senior Counsel appearing for the appellant / 4th respondent in the writ petition that if notice was ordered to him, he would have definitely appeared and file counter affidavit with supporting documents to substantiate the above said fact and in that

event, the writ petition would not have been disposed of in the said manner and would further urge that as on today, the appellant / 4th respondent is carrying on the dealership and that apart, he was not a practicing advocate and he has already suspended his practice as a Advocate before the Bar Council of India vide communication dated 27.08.2018 and hence prays for allowing of the writ appeal by setting aside the impugned order passed in the writ petition.

12.Per contra, Mr.Arokiaraj, learned counsel for the 1st respondent / writ petitioner has drawn the attention of this Court to the counter affidavit filed by him in the writ appeal as well as the supporting typed set of documents and would submit that as per the provisions of the Bar Council of Tamil Nadu and Puducherry Rules and Advocates Act, at the time of application and allotment, admittedly, the appellant / 4th respondent was a practicing Advocate and evidencing the fact, he had participated in the Civil Judges Examination also during the year 2012 and he has suspended his practice only on 27.08.2018 and a practicing Advocate cannot act as a dealer for a petroleum products.

13.It is his further submission that the relationship between him and the appellant / 4th respondent is not a matrimonial factor and what was

pointed out by him in his representation as to the irregularities in allotment of dealership to persons belongs to SC/ST category and the learned Judge in the impugned order merely directed to dispose of the representation submitted by him after putting on notice the 1st respondent / writ petitioner as well as the 4th respondent / appellant and in pursuant to the same, the 3rd respondent in the writ petition has also issued notice and conducted a preliminary enquiry and since no prejudice has been caused to the appellant / 4th respondent, this Court may direct the 3rd respondent in the writ petition to proceed further with the enquiry and prays for appropriate orders and communicate the decision taken to the appellant / 4th respondent.

14. The learned Standing Counsel appearing for the respondents 3 and 4 would submit that in pursuant to the impugned order, notices were issued to the appellant as well as to the 1st respondent herein and since, this Court has seized of the matter in the form of writ appeal and when interim orders are also in operation having deferred further proceedings subject to the result of the writ appeal, they will take appropriate action.

15. This Court paid its best attention to the rival submission and also perused the materials placed before it.

16.It is not in dispute that the 1st respondent / writ petitioner is related to the appellant / 4th respondent and the said fact has not been disclosed either in the affidavit filed in support of the writ petition or in the counter affidavit filed in the writ appeal.

17.The 1st respondent / writ petitioner though would claim that he did apply for the dealership, for which the appellant / 4th respondent became the successful dealer, no material whatsoever has been placed before this Court. It is also to be noted at this juncture that the statement of performance of the candidates who were interviewed on 28.12.2015 is available in the additional affidavit filed by the appellant / 4th respondent in the writ petition and the name of the 4th respondent / appellant, appears as S.NO.1 and the name of the 1st respondent / writ petitioner, have not been there and thereby, this Court can draw the presumption that he did not apply for the dealership. The petitioner in the affidavit filed in support of the writ petition has stated that the consideration of the applicant for dealership and allotment to the appellant / 4th respondent, is in violation of the Clause 28 B of the IOC Dealership. In the considered opinion of this Court, there is an factual error in paragraph NO.5 of the affidavit and the typed set of documents would disclose that Clause No.28 B pertains to IOC retail

outlet dealership and not HPCL. Admittedly, the dealership for SC/ST categories, the copies of the memorandum of Agreement entered into between the 4th respondent / writ petitioner and the official respondents 2 and 3 has also been enclosed in the typed set of documents and as per Clause No.4 of the said Dealership Agreement speaks about *Faithful Performance* and as per Clause No.4 (c) (ii) *"the dealer shall not take up any other employment or engage in any other business apart from the operation of the Dealership which is the subject matter of this agreement"*

18. The application submitted by the appellant/4th respondent is also enclosed in the typed set of documents and he has disclosed the fact that he is an Advocate and he has also been awarded mark for being a Graduate by the 3rd respondent. Profession of Advocate cannot be equated with any other employment or business and therefore, in the considered opinion of this Court, there is no express or specific bar prohibiting the 4th respondent / appellant herein to apply for such a Dealership and it was also noted at this juncture that the appellant / 4th respondent is operating such dealership right from the year 2008 for the past 10 years and the award of the dealership has not been put to any specific challenge by the 1st respondent / writ petitioner.

19.The 1st respondent / writ petitioner also moved the Bar Council of India as to the fact of running petroleum retail outlet dealership, despite the fact that he was an Advocate and the Bar Council of India and Puducherry has also taken it on file in Complaint No.216 of 2018 and the 1st respondent / writ petitioner if so advised, he is at liberty to proceed with the said complaint in accordance with law.

20.As already pointed out, the 1st respondent / writ petitioner did not disclose the fact of his relationship between him and the 4th respondent and admittedly, there are matrimonial issues between him and his wife who also happens to be the niece of the appellant / 4th respondent. The 1st respondent / writ petitioner was not one of the applicants for the petroleum retail outlet dealership for which the appellant / 4th respondent became the successful bidder and running the dealership right from the year July 2008 and though he claims that he applied, for which no material whatsoever have been placed, before this Court.

21.There is no express / prohibiting the appellant / 4th respondent for applying for dealership and even in the application, he has disclosed the fact of Advocate at the relevant point of time by way of subsequent development, the appellant / 4th respondent has also suspended his

practice with effect from 27.08.2018, as evidenced by the communication of the bar council dated 01.07.2018.

22. Admittedly, the writ petition came to be disposed of at the admission stage itself without affording an opportunity to the 4th respondent / appellant to refute the allegation levelled against him by the 1st respondent / writ petitioner.

23. In the considered opinion of this Court, there is error apparent on the face of the record for having disposal of the writ petition without putting the 4th respondent / appellant on notice. In the light of the reasons assigned above, this Court is of the considered view that the impugned order passed in the writ petition warrants interference.

24. In the result, this writ appeal stands allowed and the impugned order dated 16.08.2017 made in W.P.No.17027 of 2018 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

[M.S.N.,J] [P.R.M., J]
07.01.2019

sk
Index : No
Internet : Yes

To

- 1.The Secretary to Government of India,
Ministry of Petroleum and Natural Gas
Shastri Bhavan
New Delhi-110 001.
- 2.The Chairman cum Managing Director,
Hindustan Petroleum Corporation Limited,
17, Jamshedji Tata Road,
Mumbai-400 020.
- 3.The Regional Manager,
Coimbatore Regional Office,
HPCL House, 18/3, Big Bazaar Road,
Coimbatore 641 001.



WEB COPY

M.SATHYANARAYANAN.,J.
and
P.RAJAMANICKAM.,J.

sk



WA.No.2180/2018

WEB COPY

07.01.2019